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Attorneys for Third-Party Defendant Ocean Network Express Pte. Ltd.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE COMPLAINT OF

Hapag-Lloyd Aktiengesellschaft a/k/a Hapag-
Lloyd AG

Petitioner,

AS OWNERS AND OPERATORS OF THE
M/V YANTIAN EXPRESS.

19 Civ. 5731 (GHW) (RWL)

DECLARATION OF
DOUGLAS WYATT

1. I am Supervisor of Latin American and Trans-Atlantic Marketing for Ocean Network Express (North America) Inc., 8730 Stony Point Parkway, Richmond, Virginia 23235. I have held this position since July 2020. From March 2018, just prior to when Ocean Network Express (North America) Inc. began operations, to July 2020, I was Import Customer Service Manager for Ocean Network Express (North America) Inc.
2. Except where otherwise indicated, this declaration is given on personal knowledge, and is given in support of the motion by Ocean Network Express Pte. Ltd. ("ONE") in this action to dismiss claims against ONE on the basis of the Singapore forum selection clause in ONE's term and conditions of carriage.
3. Ocean Network Express (North America) Inc. is the U.S. agent of ONE, which is headquartered in Singapore. ONE is a major ocean common carrier of containerized cargo,

serving ports worldwide and ONE is listed by the Federal Maritime Commission (FMC) as a vessel-operating common carrier (VOCC).

4. One of the functions of Ocean Network Express (North America) Inc. is to arrange for and monitor the logistics for ONE's containerized shipments originating or terminating in the U.S.
5. When I was Import Customer Services Manager, I had overall responsibility for dealing with our customers for in-bound shipments to North American ports, and in that position had ready access through our computer system to ONE's bills of lading, sea waybills, and service contracts. In that position, I was personally involved with dealing with ONE's customers after the January 3, 2019 fire on the vessel YANTIAN EXPRESS, in particular, with arrangements to transport containers to other vessels to complete their carriage to the intended discharge ports.
6. In my current position, I continue to have access through our computer system to copies of ONE bills of lading, sea waybills and service contracts.
7. For any particular shipment, ONE will issue either a bill of lading or a sea waybill, mostly depending on what the customer requires. The great majority of our customers prefer to use sea waybills. When discussing sea waybills, they are often referred to generically as bills of lading. In this declaration I will use the generic term "bill of lading" when referring to sea waybills including the sea waybills attached as exhibits hereto.
8. ONE's bill of lading terms and conditions of carriage are published in two different locations on ONE's website, www.one-line.com. The first way is as follows. When visiting this website, a menu is displayed which includes the item "Services". When "Services" is hovered over, it provides various further options including "B/L [bill of lading] Terms".

Clicking on “B/L Terms”, displays the terms and conditions for bills of lading issued by ONE. A copy of the terms and conditions as displayed in this area on ONE website is attached as Exhibit A. These terms have not changed since ONE began operating on April 1, 2018. The preamble to such terms and conditions make clear that they are applicable when the document is issued as a bill of lading or as a sea waybill.

9. The second way is as follows. The website of the FMC, www.fmc.gov, lists the locations of the tariffs for all VOCCs and shows that ONE’s tariffs can be found on ONE’s website, www.one-line.com. Going to www.one-line.com, hovering over the item “Ecommerce” and clicking the icon labeled “Ecommerce Applications” will display a page with a small icon labeled “Rate and Tariff.” Clicking on this icon brings you to a sub-page labeled “Rate and Tariff”, which displays various icons. Clicking on the icon labeled “Tariff Rule Search” brings you to a search engine where rates and tariffs can be searched (https://ecomm.one-line.com/ecom/CUP_HOM_3105.do). There, any ONE tariff can be searched by tariff number or type. The ONE bill of lading tariff is ONEY-020. A copy of the portion of tariff ONEY-020 containing the terms and conditions of ONE's bill of lading as downloaded from the ONE website are attached hereto as Exhibit B. These terms and conditions are identical to the ONE bill of lading terms and conditions found on the website homepage as noted in paragraph 8 above and as attached hereto as Exhibit A. These terms and conditions have not changed since ONE began doing business on April 1, 2018.
10. As is the practice for ocean common carriers (VOCCs), ONE has service contracts with the great majority of its customers. Service contracts are confidential agreements filed with the Federal Maritime Commission (FMC). The essential terms of a service contract include, but are not limited to, freight rates to move containers from particular origins to particular

destinations; freight rates depending on the size and type of container; commitments from customers to ship with the certain minimum volumes; and liquidated damages for non-performance of commercial commitments such as failure to provide the minimum quantity of containers.

11. I understand that this case involves voyage 108E of the containership YANTIAN EXPRESS during which, on January 3, 2019, a fire broke out, causing damage to cargo in numerous containers being carried on the vessel. The vessel proceeded to Freeport, Bahamas as port of refuge, where damaged containers were off-loaded. The vessel then proceeded to Halifax on about May 1, 2019, where all remaining containers were discharged and the containers not bound for Halifax were transported on other vessels for carriage to U.S. ports.
12. The YANTIAN EXPRESS was owned and operated by Hapag-Lloyd. At the time of the voyage Hapag-Lloyd, Yang Ming Marine Transport Corporation, and ONE were parties to a vessel sharing agreement (VSA) under which they reserved slot space on each other's vessels. The YANTIAN EXPRESS was supplied by Hapag-Lloyd under the VSA, and ONE and Yang Ming reserved slot space on the vessel for carriage of containerized cargo moving under their respective bills of lading. Ocean common carriers that reserve slot space on a vessel owned by another party are known as slot charterers.
13. I understand that ONE's motion to enforce the Singapore forum clause will focus on four claims against ONE, and that such claims involve the following four ONE bills of lading: ONEYSGNUC2079300, ONEYBKKUH0061800, ONEYBKKUF3664400, and ONEYBKKUF7623300. Each claim is discussed below.

Claim no. 1, involving bill of lading ONEYSGNUC2079300

14. Attached hereto as Exhibit C is a copy of this ONE bill of lading for the carriage of container SEGU9170820, said to contain frozen fish, from the port of Cai Mep, Vietnam to the port of New York on the YANTIAN EXPRESS.
15. The bill of lading box headed "SERVICE CONTRACT NO." lists SGN18T00028, which is not a service contract. In fact, this number refers to this shipment being carried under a tariff rate published by ONE. The ONE bill of lading form does not have a box for tariff numbers; thus, for tariff shipments, the practice is to put the reference to the tariff in this box. Exhibit D hereto is a copy of ONE's tariff rate for a shipment of frozen seafood in a 40-foot-long refrigerated shipping container from Vietnam to New York. SGN18T00028 is merely an internal reference number used by ONE to apply the tariff rate and does not appear on the tariff sheet.
16. After this container arrived at the port of New York it was returned to Vietnam at the request of the customer under ONE bill of lading RICVU0678500, issued on June 29, 2019.

Claim no. 2, involving bill of lading ONEYBKKUH0061800

17. Attached hereto as Exhibit E is a copy of this ONE bill of lading for the carriage of container DRYU6009610, said to contain TVs, from the port of Laem Chabang, Thailand to the port of Savannah, Georgia on the YANTIAN EXPRESS. The Shipper on this bill of lading is Funai Electric Co. Ltd.
18. The number appearing in the "SERVICE CONTRACT NO." box, OSAB00095, is the service contract between ONE and Funai Electric Co. Ltd. A redacted copy of this service contract is attached hereto as Exhibit F. The terms redacted are the confidential commercial terms relating to freight rates, volumes, various service commitments, and origin and

destination points. To give a sense of what has been redacted, the headings of and relating to the first table under Section 6-1 (on the seventh page of the contract) have not been redacted. This shows that freight rates for the carriage of a container depend on the route (Asia to North America), the commodity, the origin, the destination, the term of service (CY), the type of container, and the size of the container. The service contract consists of numerous tables of this format and these have all been redacted.

19. Section 8 (entitled Duration of the Contract) of the commercial terms portion of the service contract shows that for shipments from Asia to North America, the effective dates of the contract are May 8, 2018 through April 30, 2019. During the duration period of any service contract, the parties can continue to negotiate and amend commercial terms such as freight rates, volume commitments, and services to be provided. The “effective date” on the very first page of a service contract reflects this. It is rare for boiler-plate terms of a service contract to be amended, and none of the service contracts attached hereto had any modifications to boiler-plate terms.

Claim no. 3, involving bill of lading ONEYBKKUF3664400

20. Attached hereto as Exhibit G is a copy of this ONE bill of lading for the carriage of containers TGHU5281274 and TCKU4404763, said to contain electronic auto parts, from the port of Laem Chabang, Thailand to the port of New York on the YANTIAN EXPRESS. The consignee on the bill of lading is Expeditors International of Washington, Inc. (“Expeditors”), one of ONE's major NVOCC customers.
21. The “SERVICE CONTRACT NO.” box lists NYCN00326, which is the service contract between ONE and Expeditors International. A redacted copy of this service contract is attached hereto as Exhibit H, using the same redaction method as Exhibit F hereto except that

a commercially-sensitive term at the end of the Terms and Conditions section has also been redacted. Section 8 of the commercial terms portion of the service contract shows that for shipments from Asia to North America, the effective dates are May 15, 2018 through April 30, 2019.

22. Expeditors International, as a NVOCC, would have issued its own bill of lading to its customer for the carriage of these containers on the YANTIAN EXPRESS, and I am advised that the bill of lading attached hereto as Exhibit I was provided to our counsel by the firm of Hill Rivkins, who act for the cargo interests for the cargo in this container.
23. All ocean carriers including NVOCCs are required to make publicly available via the internet their bill of lading terms and conditions of carriage. Attached hereto as Exhibit J is a true and correct copy of the terms and conditions of the Expeditors International bill of lading terms downloaded from their website.

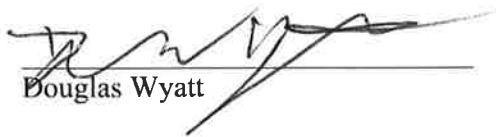
Claim no. 4, involving bill of lading ONEYBKKUF7623300

24. Attached hereto as Exhibit K is a copy of this ONE bill of lading for the carriage of containers CAIU5415589 and MORU0707602, said to contain organic coconut water, from the port of Laem Chabang, Thailand to the port of New York on the YANTIAN EXPRESS. The consignee on the bill of lading is Apex Maritime Co. Inc., one of ONE's major NVOCC customers.
25. The "SERVICE CONTRACT NO" box lists BKKN00001, our service contract with Apex Maritime Co. Inc. Section 8 of the commercial terms portion of the service contract shows that for shipments from Asia to North America, the effective dates of this contract are April 1, 2018 through April 30, 2019. A redacted copy of this service contract is attached hereto as Exhibit L, using the same method as Exhibit H hereto.

26. Each of the service contracts attached hereto incorporates by reference various ONE tariffs including ONEY-020, which, as explained at paragraph 9 above, contains ONE's bill of lading terms and conditions and is attached hereto as Exhibit B. As noted, in 9 above, all of ONE's tariffs are available to the public at ONE's website.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18th day of September, 2020


Douglas Wyatt